

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

FEB 24 1999

IN THE MATTER OF:

DOCKET NUMBER: 96-03179

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His honorable discharge be changed to reflect a medical discharge.

APPLICANT CONTENDS THAT:

He was injured while on active duty. He was hospitalized at a number of Army Hospitals and has been permanently disabled, due totally to service connected injuries he received.

Applicant's submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant submitted an application for correction of his records, undated, which was received by SAF/MIBR, Randolph Air Force Base, Texas on 28 October 1996, At that time the applicant was represented by counsel. On 24 June 1997, applicant's counsel requested that the application be withdrawn without prejudice until such time he and the applicant were able to proceed with additional documentation. On 3 July 1997, the AFBCMR informed counsel that the case was withdrawn and that he may request the case be reopened at a later date.

On 12 March 1998, applicant, through the office of Senator [REDACTED] is formally requesting that his case be reopened.

It appears that applicant's military records were destroyed by fire at the National Personnel Records Center, St. Louis, Missouri in 1973,

Available records reflect that applicant enlisted in the Army Air Corps on 5 October 1942 in the grade of private. He was continuously hospitalized from 28 November 1942 until his discharge on 23 May 1943.

The additional relevant facts pertaining to this application, extracted from the applicant's available military personnel and medical records, are contained in the letter, dated 30 April 1997, prepared by the Chief, Medical Consultant, BCMR, who is the appropriate office of the Air Force Office of Primary Responsibility (OPR). Accordingly, there is no need to recite these facts in this Record of Proceedings.

The applicant was administratively discharged on 23 May 1943, with an honorable discharge, under the provisions of Army Regulation (AR) 615-360 with a Certificate for Disability Discharge (CDD). He served 7 months and 19 days on active duty.

AIR FORCE EVALUATION:

The Chief, Medical Consultant, BCMR states that the evidence of record and medical examinations prior to separation indicate the applicant was not fit and was medically disqualified for continued military service. The preponderance of evidence indicates the applicant was suffering from a psychoneurosis and was certified to the Veterans Administration with a Certificate of Disability Discharge. Regardless of the cause of applicant's neurologic symptoms and findings, he was not eligible for disability retirement from the Army Air Corps, since laws in effect at that time specifically denied disability retirement eligibility for enlisted personnel who had fewer than 20 years of active military service. Reasons for discharge and discharge proceedings are well documented in the records. Action and disposition in this case are proper and reflect compliance with Air Force/Army directives which implement the law. Evidence of record establishes beyond all reasonable doubt that the applicant was handled appropriate to regulations and medical knowledge then in effect, that the reason for his separation was proper, and that no error or injustice occurred in this case. The Medical Consultant is of the opinion that no change in the records is warranted and the application should be denied.

A copy of the Air Force evaluation is attached at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 31 March 1998 for review and response within 30 days. The applicant did submit a letter, dated 13 April 1998 stating that all correspondence is to go to the office of Senator Edward M. Kennedy. (Exhibit E).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After a thorough review of the evidence of record and applicant's submission, we are not persuaded that his records should be corrected to reflect a medical discharge or retirement. His contentions are duly noted; however, we do not find these uncorroborated assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the Air Force. As stated by the BCOMR Medical Consultant, the evidence of record and medical examinations prior to the applicant's separation, indicate he was not fit and was medically disqualified for continued military service. The psychoneurosis the applicant suffered was certified to the Veterans Administration with a Certificate of Disability Discharge. However, the applicant was not eligible for disability retirement since laws in effect at that time denied disability retirement for enlisted personnel who had fewer than 20 years of active military service. We therefore agree with the recommendations of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either an error or an injustice. Therefore, we find no compelling basis to recommend granting the relief sought.
4. The documentation provided with this case was sufficient to give the Board a clear understanding of the issues involved and a personal appearance, with or without counsel, would not have materially added to that understanding. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

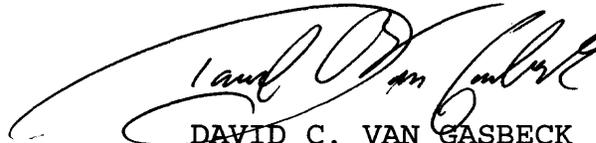
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 5 November 1998, under the provisions of AFI 36-2603.

Mr. David C. Van Gasbeck, Panel Chair
Mr. Edward H. Parker, Member
Ms. Patricia A. Vestal, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, undated, w/atchs.
- Exhibit B. Applicant's Available Master Personnel Records.
- Exhibit C. Letter, BCMR Medical Consultant, dated 30 Apr 97.
- Exhibit D. Letter, AFBCMR, dated 31 Mar 98.
- Exhibit E. Applicant's Letter, dated 13 Apr 98.



DAVID C. VAN GASBECK
Panel Chair